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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/754,812	01/09/2004	Peter S. Schulte	92/D03-016A	1565
34431 7590 04/16/2009 HANLEY, FLIGHT & ZIMMERMAN, LLC 150 S. WACKER DRIVE SUITE 2100 CHICAGO, IL 60606				
EXAMINER STRIMBU, GREGORY J				
ART UNIT		PAPER NUMBER		
3634				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/754,812

Applicant(s)

SCHULTE ET AL.

Examiner

Gregory J. Strimbu

Art Unit

3634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 February 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 31, 37-45 and 48-64 is/are pending in the application.
- 4a) Of the above claim(s) 43 and 55 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 31, 37-42, 44, 45, 48-54, 56-64 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Continued Examination Under 37 CFR 1.114

The request filed on February 2, 2009 for a Request for Continuing Examination (RCE) under 37 CFR 1.114 is acceptable and an RCE has been established. Any previous finality is hereby withdrawn and a new action on the merits follows. Any newly-submitted claims have been added. An action on the RCE follows.

Election/Restrictions

Applicant's election with traverse of species I in the reply filed on April 17, 2006 is acknowledged. The traversal is on the ground(s) that the examiner has failed to provide any reasoning as to why each of the alleged species is independent or distinct, the examiner has failed to allege that it would be a serious burden on the examiner to consider all of the different species, and maintaining the restriction requirement is a serious burden on the applicant. This is not found persuasive because the examiner has provided reasoning as to why each of the species is independent and distinct. See page 2 of the Office action mailed March 17, 2006. Because the applicant has failed to address the examiner's reasoning why each of the species is patentably distinct, the applicant's comments in the reply of April 17, 2006 are not persuasive. Additionally, withdrawal of the restriction requirement would create a serious burden on the examiner because additional classes/subclasses would need to be searched in order to properly examine all of the patentably distinct inventions. Finally, maintaining the restriction requirement does not necessarily create an additional burden on the applicant. If a generic claim is found to be allowable, all of the applicant's patentably distinct

inventions would be included in one patent. The requirement is still deemed proper and is therefore made FINAL.

Claims 43 and 55 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on April 17, 2006.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 31, 37-42, 44, 45, 48-54 and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Delgado et al. in view of Linstadt (1802519). Delgado discloses a door 10 for at least partially covering a doorway and movable relative thereto, the doorway being defined by a surrounding structure 20 that includes a wall such that the doorway has a width, the door comprising:

an upper track (not shown, but see paragraph 37, line 5);

a door panel 14 suspended from the upper track and being movable horizontally relative to the doorway along a predetermined normal path;

a lower track 22 disposed below the upper track, wherein the lower track is attachable to the surrounding structure such that the lower track is entirely outside the width of the doorway;

a panel retention system 24 adapted to be carried by the door panel, wherein the panel retention system is movably connected to the lower track such that the panel retention system and the lower track provide relative traveling motion therebetween to help guide the door panel along the predetermined normal path; and

a resilient connection 28b provided by at least one of the lower track and the panel retention system, wherein the resilient connection limits movement of the door panel out of the predetermined normal path;

the lower track 22 is a stationary bar. It could be argued that Delgado et al. fails to disclose a panel retention system that remains in contact with the lower track even if the door panel moves out of the predetermined normal path.

However, Linstadt discloses a door comprising a panel retention system 12-16 wherein the panel retention system remains in contact with a lower track 8 even if a door panel 3 moves out of a predetermined normal path;

wherein the panel retention system comprises a spring 14 and a track follower 13, wherein the track follower engages the track and the spring is coupled to the track follower to urge the door panel toward the predetermined normal path when the door panel is beyond the predetermined normal path;

wherein the spring is disposed in a tube 15;

a pliable elongate member 12 coupling the spring 14 to the track follower 13;

the pliable elongate member 12 has a length that is adjustable to vary a resiliency of the panel retention system.

It would have been obvious to one of ordinary skill in the art to provide the retention system of Delgado et al. with a spring system, as taught by Linstadt, to enable the door to automatically return to its predetermined normal path when a force has been applied to the door that is not great enough to cause separation of the retention system from the track.

With respect to claims 40 and 52, it would have been no more than an obvious matter of engineering design choice, as determined through routine experimentation and optimization, for one of ordinary skill to replace the compression spring of Linstadt with a tension spring since the properties and behavior characteristics of compression and tension springs are well known by one of ordinary skill in the art.

Claims 57-64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Delgado et al. in view of Linstadt. Delgado et al. discloses a door 10 for at least partially covering a doorway and movable relative thereto, the doorway being defined by a surrounding structure 20 that includes a wall such that the doorway has a width, the door comprising:

- an upper track (not shown, but see paragraph 37, line 5);

- a door panel 14 suspended from the upper track and being movable horizontally relative to the doorway along a predetermined normal path;

a lower track 22 disposed below the upper track, wherein the lower track 22 is attachable to the surrounding structure 20 such that the lower track 22 is entirely outside the width of the doorway;

a panel retention system 24 adapted to be carried by the door panel 14, wherein the panel retention system is movably connected to the lower track such that the panel retention system and the lower track provide relative traveling motion therebetween to help guide the door panel along the predetermined normal path; and

a resilient connection 28b provided by at least one of the lower track and the panel retention system, wherein the resilient connection allows the door panel to move out of the predetermined normal path when subjected to an impact force but applies a restorative force to the door panel.

It appears that Delgado et al. is silent concerning the restorative force having both a horizontal and a vertical component.

However, Linstadt discloses a door comprising a panel retention system 12-16 adapted to be carried by a door panel 3, wherein the panel retention system is movably connected to a lower track 8 such that the panel retention system and the lower track provide relative traveling motion therebetween to help guide the door panel along the predetermined normal path; and

a resilient connection 12, 14 provided by at least one of the lower track and the panel retention system, wherein the resilient connection allows the door panel to move out of the predetermined normal path when subjected to an impact force but applies a restorative force to the door panel that has both a horizontal component and a vertical

component (since the door panel 3 pivots about the bracket 4 as shown in figure 1) to return the door panel to the predetermined normal path upon removal of the impact force;

wherein the panel retention system remains in contact with the lower track even if the door panel moves out of the predetermined normal path (claim 58);

wherein the panel retention system comprises a spring 14 and a track follower 13, wherein the track follower engages the lower track 8 and the spring is coupled to the track follower to urge the door panel toward the predetermined normal path when the door panel is out of the predetermined normal path (claim 60);

wherein the track follower remains in contact with the lower track even when the door panel is out of the predetermined normal path (claim 61);

wherein the spring is disposed within a tube 15 (claim 62);

an elongate member 15 coupling the spring to the track follower (claim 64).

It would have been obvious to one of ordinary skill in the art to provide the retention system of Delgado et al. with a spring system, as taught by Linstadt, to enable the door to automatically return to its predetermined normal path when a force has been applied to the door that is not great enough to cause separation of the retention system from the track.

With respect to claim 63, it would have been no more than an obvious matter of engineering design choice, as determined through routine experimentation and optimization, for one of ordinary skill to replace the compression spring of Linstadt with

a tension spring since the properties and behavior characteristics of compression and tension springs are well known by one of ordinary skill in the art.

Response to Arguments

Applicant's arguments filed February 2, 2009 have been fully considered but they are not persuasive.

The above rejections no longer rely on the new matter that was added to US 2005/0076570. It should be noted that the rejection of claims 31, 37-42, 44, 45, 48-54 and 56 is the same as that presented in the final office action of September 2, 2008. The rejection of claims 31, 37-42, 44, 45, 48-54 and 56 in both the instant rejection and the final rejection only relies upon the invention as disclosed in the parent application 10/320,323 and not on the new matter added in figures 15-18.

Conclusion

THIS ACTION IS NOT MADE FINAL.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory J. Strimbu whose telephone number is 571-272-6836. The examiner can normally be reached on Monday through Friday 8:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Katherine Mitchell can be reached on 571-272-7069. The fax phone

number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gregory J. Strimbu/
Primary Examiner, Art Unit 3634